

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
A Limited Liability Partnership  
2 Including Professional Corporations  
GREGORY F. HURLEY, Cal. Bar No. 126791  
3 ghurley@sheppardmullin.com  
MICHAEL J. CHILLEEN, Bar No. 210704  
4 mchilleen@sheppardmullin.com  
650 Town Center Drive, 10th Floor  
5 Costa Mesa, California 92626-1993  
Telephone: 714.513.5100  
6 Facsimile: 714.513.5130

7 Attorneys for Defendant,  
ACE HARDWARE CORPORATION  
8

9  
10 UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA, EASTERN DIVISION  
11

12 MICHAEL SANDOVAL, an  
13 individual,

14 Plaintiff,

15 v.

16 ACE HARDWARE CORPORATION,  
Delaware corporation; and DOES 1-10,  
17 inclusive,

18 Defendants.  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. 5:25-cv-00765-JGB-SP  
Honorable Jesus G. Bernal

**DEFENDANT'S OPPOSITION TO  
PLAINTIFF'S MOTION TO  
REMAND ACTION TO THE  
SUPERIOR COURT OF  
CALIFORNIA FOR THE COUNTY  
OF SAN BERNARDINO**

Date: May 19, 2025  
Time: 9:00 a.m.  
Ctrm: 1

Action Filed: January 24, 2025  
Trial Date: None Set

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**TABLE OF CONTENTS**

**Page**

I.	INTRODUCTION.....	1
II.	FACTUAL AND PROCEDURAL BACKGROUND.....	1
	A. Plaintiff’s Original State Complaint .....	1
	B. Defendant’s Removal To Federal Court. ....	2
	C. Plaintiff’s First Amended Complaint And Motion To Remand. ....	3
III.	ARGUMENT .....	3
A.	PLAINTIFF’S MOTION TO REMAND SHOULD BE DENIED BECAUSE DIVERSITY JURISDICTION EXISTS.....	3
	1. Statutory Damages. ....	3
	2. Injunctive Relief.....	5
	3. Attorneys’ Fees. ....	7
B.	PLAINTIFF’S MOTION TO REMAND SHOULD BE DENIED BECAUSE THE COURT HAS FEDERAL QUESTION JURISDICTION.....	8
	1. The Interplay Between The Unruh Act And The ADA.....	8
	2. The Court Has Federal Question Jurisdiction.....	9
IV.	CONCLUSION. ....	13

## TABLE OF AUTHORITIES

**Page(s)**

### Cases

<i>Campbell v. Vitran Express, Inc.</i> 471 Fed.Appx. 646 (9th Cir. 2012) .....	4
<i>Chavez v. JPMorgan Chase &amp; Co.</i> 888 F.3d 413 (9th Cir. 2018) .....	5
<i>Doran v. 7-Eleven, Inc.</i> 524 F.3d 1034 (9th Cir. 2008) .....	8
<i>Engel v. Worthington</i> 60 Cal.App.4th 628 (1997) .....	7
<i>Feezor v. Del Taco, Inc.</i> 431 F.Supp.2d 1088 (S.D. Cal. 2005) .....	4, 5
<i>Fontano v. Little Caesar Enterprises, Inc.</i> 2010 WL 4607021 (C.D. Cal. Nov. 3, 2010) .....	10, 11
<i>In re Ford Motor Co./Citibank (South Dakota), N.A.</i> 246 F.3d 952 (9th Cir. 2001) .....	5, 6
<i>Franchise Tax Bd. Of Cal. v. Constr. Laborers Vacation Trust for S. Cal.</i> 463 U.S. 1 (1983) .....	9
<i>Fritsch v. Swift Transp. Co. of Ariz., LLC</i> 899 F.3d 785 (9th Cir. 2018) .....	7
<i>Gil v. Winn-Dixie Stores, Inc.</i> 257 F.Supp.3d 1340 (S.D. Fla. June 12, 2017) .....	6
<i>Grable &amp; Sons Metal Prods., Inc. v. Darue Eng's &amp; Mfmr.</i> 545 U.S. 308 (2005) .....	9
<i>Gugliemino v. McKee Foods Corp.</i> 506 F.3d 696 (9th Cir. 2007) .....	3, 4
<i>Hubbard v. Rite Aid Corp.</i> 433 F.Supp.2d 1150 (S.D. Cal. May 4, 2006) .....	5

1	<i>Hubbard v. Twin Oaks Health and Rehabilitation Center</i>	
2	406 F.Supp.2d 1096 (E.D. Cal. April 5, 2005).....	7
3	<i>James Shayler v. Unlimited, Limited Liability Company</i>	
4	Case No. 2:20-cv-11605-SVW (July 1, 2021) .....	7
5	<i>In re Joseph R. Manning, Jr.</i>	
6	Case No. SBC-25-O-30346 (March 24, 2025).....	7
7	<i>Korn v. Polo Ralph Lauren Corp.</i>	
8	536 F.Supp.2d 1199 (E.D. Cal. 2008) .....	4
9	<i>Lonberg v. City of Riverside</i>	
10	2007 WL 2005177 (C.D. Cal. May 16, 2007).....	5
11	<i>Martinez v. Epic Games, Inc.</i>	
12	2020 WL 1164951 (C.D. Cal. Mar. 10, 2020) .....	6
13	<i>Martinez v. Johnson &amp; Johnson Consumer Inc.</i>	
14	471 F.Supp.3d 1003 (C.D. Cal. July 8, 2020) .....	6
15	<i>Molski v. Rapazzini Winery</i>	
16	400 F.Supp.2d 1208 (N.D. Cal. 2005).....	4
17	<i>Munson v. Del Taco, Inc.</i>	
18	46 Cal.4th 661 (2009).....	8
19	<i>Pickern v. Best Western Timber Cove Lodge Marina Resort</i>	
20	194 F. Supp. 2d 1128 (E.D. Cal. 2002) .....	11, 12
21	<i>Simmons v. PCR Tech.</i>	
22	209 F.Supp.2d 1029 (N.D. Cal. 2002).....	7
23	<i>Thurston v. The Container Store, Inc.</i>	
24	Case No. 5:16-CV-02658-SVW-DTB (C.D. Cal. Feb. 16, 2017) .....	12
25	<i>Wander v. Kaus</i>	
26	304 F.3d 856 (9th Cir. 2002) .....	1, 8, 10, 11, 12
27	<i>Zamora v. Wendy's Int'l., LLC</i>	
28	2020 WL 3469331 (N.D. Cal. June 25, 2020) .....	8
	<u>Statutes</u>	
	28 U.S.C. § 1446(c) .....	5

1	28 U.S.C. § 1446(c)(2) .....	4
2	42 U.S.C. § 12101(b)(3) .....	13
3	42 U.S.C. § 12188.....	8
4	Americans With Disabilities Act (“ADA”).....	<i>passim</i>
5	ADA Amendments Act of 2008 .....	10
6	Cal. Civ. Code § 51(f).....	10, 12
7	Cal. Civ. Code § 52.....	5, 7
8	Cal. Civ. Code § 52(a) .....	4
9	California Disabled Persons Act.....	11
10	California Unruh Civil Rights Act (“UCRA”) .....	<i>passim</i>
11	California Building Standard Code (“CBC”) .....	9, 12
12	Civil Code § 51 et seq.....	10
13	<u>Other Authorities</u>	
14	Defendant’s’ website – www.acehardware.com .....	1
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

1 **I. INTRODUCTION**

2 Plaintiff Michael Sandoval (“Plaintiff”) has moved to remand his lawsuit to  
3 San Bernardino County Superior Court claiming that this Court lacks federal  
4 question jurisdiction over his California Unruh Civil Rights Act (“Unruh Act”) claim under *Wander v. Kaus*, 304 F.3d 856 (9th Cir. 2002) because he intentionally  
5 amended his complaint *after removal* to eliminate his claim under the Americans  
6 with Disabilities Act (“ADA”). Furthermore, Plaintiff argues that the Court lacks  
7 diversity jurisdiction because Plaintiff has purposefully limited his claims for  
8 statutory damages and injunctive relief to less than \$75,000. Finally, Plaintiff  
9 claims that he is entitled to attorney’s fees incurred in connection with his motion to  
10 remand because removal was not objectively reasonable.

12 As explained in more detail below, Plaintiff is wrong on all counts. First, the  
13 \$75,000 amount-in-controversy threshold is easily met once the Court adds up the  
14 value of Plaintiff’s claims for statutory damages, attorneys’ fees, and injunctive  
15 relief. Second, district courts have distinguished *Wander* and held that there is  
16 federal question jurisdiction when, as here, Plaintiff’s Unruh Act claim is premised  
17 exclusively upon ADA violations or involve the resolution of a substantial question  
18 of federal law. Third, Plaintiff’s request for attorney’s fees is baseless since  
19 Plaintiff’s complaint indisputably asserted an ADA claim at the time of removal.  
20 Therefore, the Court should retain jurisdiction and deny Plaintiff’s motion to  
21 remand.

22 **II. FACTUAL AND PROCEDURAL BACKGROUND**

23 **A. Plaintiff’s Original State Complaint**

24 On January 24, 2025, Plaintiff filed his complaint in Superior Court for the  
25 County of San Bernardino. (Docket 1-1, Complaint). Plaintiff alleged that  
26 Defendant’s website – [www.acehardware.com](http://www.acehardware.com) (“Website”) – was not accessible to  
27 him as a blind individual in violation of the ADA and the Unruh Act. (Complaint  
28 ¶¶2, 63-76).

1 Plaintiff alleged that he was entitled to \$4,000 in statutory damages not only  
2 for each of his multiple visits to the Website, but also for each time he was deterred  
3 from visiting the Website and for each time he was deterred from visiting  
4 Defendant's physical stores – all of which he alleged occurred on a regular and  
5 ongoing basis. In particular, as to his actual visits, Plaintiff alleged that he visited  
6 the Website “as early as November 12, 2024, November 21, 2024, and *until the*  
7 *current date*, during Plaintiff's separate visits to the Website, Plaintiff encountered  
8 multiple access barriers which denied Plaintiff full and equal access.” (Complaint  
9 ¶55). As to his deterred visits, Plaintiff alleged that he “has been deterred on a  
10 regular basis, from accessing the Website” and from “visiting Defendant's brick-  
11 and-mortar locations.” (Complaint ¶56). Plaintiff further alleged that “[t]hese  
12 violations are ongoing” and that he wants an award of damages of “not less than  
13 \$4,000 per violation...” (Complaint ¶71, Prayer for Relief ¶4).

14 In addition to statutory damages, Plaintiff's complaint sought injunctive relief  
15 and attorney's fees. In an attempt to defeat federal diversity jurisdiction, Plaintiff's  
16 complaint purported to limit injunctive relief to \$50,000 and his statutory damages  
17 to \$24,999. (Complaint ¶¶74, 75). Tellingly, Plaintiff places no limits on the  
18 amount of attorney's fees he can recover. (Complaint ¶76, Prayer for Relief ¶6).

19 **B. Defendant's Removal To Federal Court.**

20 On March 25, 2025, Defendant removed this action to federal court based on  
21 federal question and diversity jurisdiction. Defendant explained that this Court had  
22 federal question jurisdiction over this matter because Plaintiff's ADA claim arises  
23 under a federal statute. In addition, Defendant showed that diversity jurisdiction  
24 exists because the parties are completely diverse and the amount in controversy  
25 exceeds \$75,000 when taking into account the statutory damages, injunctive relief,  
26 and attorney's fees sought by Plaintiff.

1           **C. Plaintiff's First Amended Complaint And Motion To Remand.**

2           On April 2, 2025, Plaintiff filed a First Amended Complaint ("FAC") that  
3 removed his ADA cause of action in an attempt to defeat federal question  
4 jurisdiction. Other than removing the ADA claim, the FAC is identical to Plaintiff's  
5 original complaint. As in Plaintiff's original complaint, the FAC seeks statutory  
6 damages, injunctive relief, and attorney's fees based on the same alleged multiple  
7 visits and deterred visits which allegedly occurred on a regular and ongoing basis.  
8 (Docket 10, FAC ¶¶55, 56, 65). Like Plaintiff's original complaint, the FAC also  
9 places a \$24,999 limit on statutory damages and a \$50,000 limit on injunctive relief,  
10 while imposing no limits on the amount of attorney's fees sought. (FAC ¶¶68-70).

11           On April 16, 2025, Plaintiff filed the instant motion to remand this case to  
12 state court arguing that his removal of his ADA claim defeats federal question  
13 jurisdiction and that Defendant has not met its burden to establish diversity  
14 jurisdiction because Plaintiff purposefully limited his demand for statutory damages  
15 and injunctive relief to an amount just below the jurisdiction minimum.

16           **III. ARGUMENT**

17           **A. PLAINTIFF'S MOTION TO REMAND SHOULD BE DENIED**  
18           **BECAUSE DIVERSITY JURISDICTION EXISTS.**

19           As explained below, even though it is evident that Plaintiff has attempted to  
20 avoid diversity jurisdiction by limiting his monetary and injunctive relief to less than  
21 the jurisdictional minimum, he has failed to do so in both his Complaint and the  
22 FAC.<sup>1</sup>

23           **1. Statutory Damages.**

24           Section 1332(a)'s amount in controversy requirement excludes only "interest  
25 and costs." *Gugliemino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007).

26 \_\_\_\_\_  
27 <sup>1</sup> Plaintiff concedes that the parties are completely diverse. Accordingly, Defendant  
28 focuses its arguments on the amount-in-controversy.



1 Thus, the amount in controversy not only includes “compensatory damages,” but  
2 also statutory penalties, injunctive relief, attorneys’ fees, and other various forms of  
3 relief. *Id.* Although, on a motion to remand, the burden falls to the defendant to  
4 establish that jurisdiction exists, the defendant is not obligated to completely  
5 “research, state, and prove the plaintiff’s claims for damages.” *Korn v. Polo Ralph*  
6 *Lauren Corp.*, 536 F.Supp.2d 1199, 1204-05 (E.D. Cal. 2008) (citing and quoting  
7 *McCraw v. Lyons*, 836 F.Supp. 430, 434 (W.D. Ky. 1994)). Rather, “in assessing  
8 the amount in controversy, a court must ‘assume that the allegations of the  
9 complaint are true and assume that a jury will return a verdict for the plaintiff on all  
10 claims made in the complaint.’” *Campbell v. Vitran Express, Inc.*, 471 Fed.Appx.  
11 646, 648 (9th Cir. 2012). Generally, “the sum demanded in good faith in the initial  
12 pleading shall be deemed to be the amount in controversy,” subject to certain  
13 exceptions, such as nonmonetary relief discussed below. 28 U.S.C. § 1446(c)(2).

14 In this case, Plaintiff’s claim for monetary damages exceeds, or at the very  
15 least nearly satisfies the amount-in-controversy requirement before any other relief  
16 requested in the FAC is taken into account. Under the Unruh Act, a prevailing  
17 plaintiff may recover statutory damages of no less than \$4,000 “for each and every  
18 offense” against the Act’s provisions. Cal. Civ. Code § 52(a). “‘Each offense’ is  
19 each time the plaintiff visits the non-compliant place of public accommodation or  
20 each specific instance in which the plaintiff is deterred from attempting to visit.”  
21 *Molski v. Rapazzini Winery*, 400 F.Supp.2d 1208, 12011-12 (N.D. Cal. 2005);  
22 *Feezor v. Del Taco, Inc.*, 431 F.Supp.2d 1088, 1090 (S.D. Cal. 2005) (“Plaintiffs  
23 seek damages for each and every offense under the Unruh Act.”).

24 As explained above, both the Complaint and the FAC allege that Plaintiff: (1)  
25 has encountered purported access barriers on the Website on numerous occasions  
26 and up to the current date; (2) has been continuously deterred from accessing  
27 Defendant’s website and physical store locations on a “ongoing” basis; and (3) will  
28 continue to be deterred until the Court grants injunctive relief.

1 In its removal papers, Defendant conservatively estimated only three actual  
2 visits and six deterrence visits, yielding \$36,000 in statutory damages. However,  
3 based on Plaintiff's sweeping allegations of repeated and ongoing injury up to the  
4 present, at \$4,000 per offense, the allegedly still-ongoing Unruh violations alleged  
5 in the Complaint and FAC easily satisfy the \$75,000 amount in controversy. *See*,  
6 *e.g., Lonberg v. City of Riverside*, 2007 WL 2005177, at \*9 (C.D. Cal. May 16,  
7 2007) (awarding \$221,000 in statutory damages for repeated encounters with a non-  
8 compliant sidewalk) (reversed on other grounds by *Lonberg v. City of Riverside*, 571  
9 F.3d 846, 852 (9th Cir. 2009)); *see also Feezor*, 431 F.Supp.2d at 1090 (“[A]  
10 disabled plaintiff can recover the statutory minimum each time a defendant's  
11 noncompliance with the ADA and [the Unruh Act] deterred the plaintiff from  
12 visiting a particular establishment”); *see also Hubbard v. Rite Aid Corp.*, 433  
13 F.Supp.2d 1150, 1170 (S.D. Cal. May 4, 2006) (“The Court concludes that Plaintiffs  
14 are entitled to statutory damages of \$4,000 under Section 52 for these three visits for  
15 an award of \$12,000 to each Plaintiff totaling \$24,000.”)

16 Moreover, even *assuming arguendo*, that Plaintiff's \$24,999 limitation on  
17 damages applies, the \$75,000 threshold is easily met when one takes in to account  
18 the other relief Plaintiff seeks, such as attorneys' fees and injunctive relief.

## 19 **2. Injunctive Relief.**

20 The Court may also consider the cost of nonmonetary relief, such as an  
21 injunction, when determining the amount in controversy. 28 U.S.C. § 1446(c); *see*  
22 *Chavez v. JPMorgan Chase & Co.*, 888 F.3d 413, 416 (9th Cir. 2018). The Ninth  
23 Circuit has adopted the “either viewpoint rule” such that “the test for determining  
24 the amount in controversy is the pecuniary result to either party which the judgment  
25 would directly produce.” *In re Ford Motor Co./Citibank (South Dakota), N.A.*, 246  
26 F.3d 952, 958 (9th Cir. 2001). “In other words, where the value of plaintiff's  
27 recovery. . . is below the jurisdictional amount, but the potential cost to the  
28 defendant of complying with the injunction exceeds that amount, it is the latter that

1 represents the amount in controversy for jurisdictional purposes.” *Id.* However, the  
2 plaintiff cannot expressly limit the cost of injunctive relief sought in the complaint.  
3 *See Martinez v. Johnson & Johnson Consumer Inc.*, 471 F.Supp.3d 1003, 1008  
4 (C.D. Cal. July 8, 2020) (“the Court agrees with the reasoning found in *Martinez*  
5 and concludes that Plaintiff cannot expressly limit the cost of injunctive relief [to  
6 remedy ADA violations on Defendant’s website]. If Plaintiff prevails in this case,  
7 and injunctive relief is granted, the cost will be out of Plaintiff’s control.”); *see also*  
8 *Martinez v. Epic Games, Inc.*, 2020 WL 1164951, at \*3 (C.D. Cal. Mar. 10, 2020)  
9 (“Plaintiff neglects to explain how this express disclaimer would actually apply in a  
10 world in which he prevails on his claim and a court issues an injunction ordering  
11 Defendant to change its website. . . Defendant would have no choice but to comply  
12 with the injunction. . . regardless of whether the cost of doing so would exceed  
13 Plaintiff’s self-imposed \$20,000 ceiling.”)

14 Here, in addition to monetary damages and attorneys’ fees, Plaintiff seeks  
15 preliminary and permanent injunctive relief to remedy any violations on the  
16 Website. (Complaint, Prayer; FAC, Prayer). Such compliance costs alone exceed  
17 the \$75,000 threshold. *See, e.g., Gil v. Winn-Dixie Stores, Inc.*, 257 F.Supp.3d  
18 1340, 1345 (S.D. Fla. June 12, 2017) (defendant estimated \$250,000 to make  
19 website accessible to the blind per WCAG guidelines) (vacated on other grounds by  
20 *Gil v. Winn-Dixie Stores, Inc.*, 993 F.3d 1266 (11th Cir. April 7, 2021)).

21 Although Plaintiff attempts to limit the cost of injunctive relief to \$50,000, it  
22 is unclear how the Court could form the injunction in such a way as to allow  
23 Defendant to stop in the middle of making changes to its Website once the cost  
24 reaches \$50,000. However, even *assuming arguendo*, that Plaintiff’s \$50,000 limit  
25 to the injunctive relief applies and is feasible, that amount combined with statutory  
26 damages and attorneys’ fees exceeds the \$75,000 amount-in-controversy  
27 requirement.  
28

1                   **3.     Attorneys’ Fees.**

2           Plaintiff admits that attorneys’ fees may be considered when determining the  
3 amount in controversy, but claims that fees “are limited to those incurred in the  
4 action thus far.” (Plaintiff’s Motion at 8). However, under Ninth Circuit law, future  
5 attorneys’ fee must be considered. *See Fritsch v. Swift Transp. Co. of Ariz., LLC*,  
6 899 F.3d 785, 794 (9th Cir. 2018) (“Because the law entitles Fritsch to an award of  
7 attorneys’ fees if he is successful, such future attorneys’ fees are at stake in the  
8 litigation, and must be included in the amount in controversy”); *see also Simmons v.*  
9 *PCR Tech.*, 209 F.Supp.2d 1029, 1034-35 (N.D. Cal. 2002) (“Such fees necessarily  
10 accrue until the action is resolved. Thus, the Ninth Circuit must have anticipated the  
11 district courts would project fees beyond removal.”)<sup>2</sup> Indeed, prosecuting an  
12 individual Unruh Act claim can lead to a substantial recovery in attorneys’ fees.  
13 *See, e.g., Engel v. Worthington*, 60 Cal.App.4th 628, 635-36 (1997) (finding  
14 \$80,875 in attorneys’ fees in 1997 for recovering \$250 in Unruh damages to be  
15 reasonable); *see also Hubbard v. Twin Oaks Health and Rehabilitation Center*, 406  
16 F.Supp.2d 1096, 1101 (E.D. Cal. April 5, 2005) (awarding plaintiff’s counsel  
17 approximately \$60,000 in attorneys’ fees and costs as the prevailing party under Cal.  
18 Civ. Code section 52).

19 \_\_\_\_\_  
20 <sup>2</sup> Plaintiff’s counsel consistently files motions to recover attorneys’ fees in the  
21 actions they file, to the extent that they have been disciplined by the State Bar of  
22 California for filing fraudulent statements regarding the total hours Plaintiff’s  
23 counsel billed to their cases. *See Request for Judicial Notice (“RJN”), ¶ 1; Ex. A (In*  
24 *re Joseph R. Manning, Jr.*, Case No. SBC-25-O-30346 (March 24, 2025) (alleging  
25 claims of moral turpitude and breach of professional ethics for fraudulent requests  
26 for attorneys’ fees)). Moreover, federal courts have sanctioned Plaintiffs’ counsel  
27 for the same misconduct. *See RJN, ¶ 2; Ex. B (James Shayler v. Unlimited, Limited*  
28 *Liability Company*, Case No. 2:20-cv-11605-SVW (July 1, 2021) (finding that the  
attorneys signed sworn declarations containing factual contentions that lacked  
evidentiary support and referring the matter to the State Bar of California for  
investigation)). Therefore, the court may expect Plaintiff’s counsel to try to recover  
attorneys’ fees in this matter, as well.

1 Even if future attorneys' fees are not considered, Plaintiff's motion to remand  
2 alone establishes the amount in controversy as Plaintiff seeks \$1,500 in fees on the  
3 grounds that Defendant's removal was not objectively reasonable. Even with  
4 Plaintiff's self-imposed limitation of \$74,999 on statutory damages and injunctive  
5 relief, it does not take a mathematician to see that only \$2 in attorneys' fees would  
6 satisfy the jurisdictional threshold, much less the \$1,500 that Plaintiff currently  
7 seeks.<sup>3</sup>

8 **B. PLAINTIFF'S MOTION TO REMAND SHOULD BE DENIED**  
9 **BECAUSE THE COURT HAS FEDERAL QUESTION**  
10 **JURISDICTION.**

11 **1. The Interplay Between The Unruh Act And The ADA.**

12 When it enacted Title III of the ADA, Congress explicitly provided private  
13 plaintiffs with a right of action to enforce the ADA as to barriers to access in places  
14 of public accommodation. *See* 42 U.S.C. § 12188. In doing so, Congress granted  
15 federal district courts the power to order injunctive relief in order to enforce the  
16 barrier removal provisions of the ADA. *Id.* As recognized by the Ninth Circuit,  
17 private enforcement through litigation is one of the primary methods to effectuate  
18 compliance with the ADA and provide greater accessibility to disabled persons.  
19 *See, e.g., Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1039 (9th Cir. 2008). Under the  
20 ADA, the only remedy available to private plaintiffs is injunctive relief. *See, e.g.,*  
21 *Wander v. Kaus*, 304 F.3d 856, 858 (9th Cir. 2002); 42 U.S.C. § 12188.

22 Following the ADA's enactment, lawmakers in the state of California decided  
23 to modify California's Unruh Act to incorporate the ADA. *See Munson v. Del Taco,*  
24 *Inc.*, 46 Cal.4th 661, 668-669 (2009). As a result, "[a] violation of the ADA is, by  
25 statutory definition, a violation of . . . the Unruh Act." *Zamora v. Wendy's Int'l.*,

---

26 <sup>3</sup> It goes without saying that Plaintiff's demand for \$1,500 is specious as  
27 Defendant's removal was undeniably reasonable since Plaintiff asserted an ADA  
28 cause of action in his complaint.

1 *LLC*, 2020 WL 3469331, \*3 (N.D. Cal. June 25, 2020). The ADA has specific  
2 accessibility guidelines for physical structures such as buildings which are contained  
3 in the 1991 ADA Standards and the 2010 ADA Standards. Similarly, the Unruh Act  
4 has specific accessibility standards for physical structures which are contained in the  
5 California Building Code (“CBC”). These accessibility standards under federal and  
6 state law largely overlap, but California has some independent standards. Thus, in  
7 general, a plaintiff seeking to prove a violation of the Unruh Act could rely upon a  
8 violation of the 1991 or 2010 ADA Standards or upon a violation of a standard in  
9 the CBC which may or may not be identical to its federal counterpart.

10 However, unlike the ADA, violations of California’s state-law statutes entitle  
11 successful private plaintiffs to statutory damages (assuming they can show the  
12 additional state-law elements required for the awarding of damages). As explained  
13 below, whether or not a district court has federal question jurisdiction in a case  
14 alleging a violation of the Unruh Act depends on whether the Unruh Act claim is  
15 premised upon violations of federal or state accessibility standards and whether the  
16 plaintiff is seeking injunctive relief.

## 17 **2. The Court Has Federal Question Jurisdiction.**

18 Federal question jurisdiction exists over state law claims, *inter alia*,  
19 “plaintiff’s right to relief depends on the resolution of a substantial question of  
20 federal law.” *Franchise Tax Bd. Of Cal. v. Constr. Laborers Vacation Trust for S.*  
21 *Cal.*, 463 U.S. 1, 27-28 (1983); *see also Grable & Sons Metal Prods., Inc. v. Darue*  
22 *Eng’s & Mfmr.*, 545 U.S. 308, 314 (2005) (explaining that a complaint alleging only  
23 violations of state law may be removed to federal court under federal question  
24 jurisdiction if a “state-law claim necessarily raise[s] a stated federal issue, actually  
25 disputed and substantial, which a federal forum may entertain without disturbing  
26 any congressionally approved balance of federal and state judicial responsibilities”).

27 Even though Plaintiff removed the ADA cause of action, the FAC continues  
28 to allege violations of the ADA:



- 1 • “Each of Defendant’s violations of the Americans with Disability Act  
2 constitutes a violation of the UCRA. Cal. Civ. Code § 51(f).” FAC  
3 ¶42.
- 4 • “Defendant is also violating the UCRA, Civil Code § 51 et seq. because  
5 the conduct alleged herein violates various provisions of the Americans  
6 with Disabilities Act, 42 U.S.C. § 12181 et seq. as amended by the  
7 ADA Amendments Act of 2008 (P.L. 110-325), as set forth above.  
8 Section 51(f) of the Civil Code provides that a violation of the right of  
any individual under the ADA also constitutes a violation of the  
UCRA.” FAC ¶67.

9 Plaintiff contends that he can purposefully evade federal jurisdiction by  
10 alleging only a violation of the Unruh Act even though it is premised exclusively  
11 upon a violation of the ADA, citing *Wander v. Kaus*, 304 F.3d 856 (9th Cir. 2002).  
12 Plaintiff is wrong. In *Wander*, the Ninth Circuit merely stated that there was no  
13 federal-question jurisdiction over a claim under the DPA for *statutory damages after*  
14 *the ADA claim for injunctive relief had been dismissed as moot*. As explained  
15 below, courts have recognized that *Wander* does not apply to cases, such as the one  
16 here, where the plaintiff seeks relief exclusively based upon violations of the ADA.

17 The following cases are illustrative. In *Fontano v. Little Caesar Enterprises,*  
18 *Inc.*, 2010 WL 4607021 (C.D. Cal. Nov. 3, 2010), the court denied plaintiff’s  
19 request for attorneys’ fees and costs in support of his motion to remand (which  
20 defendant did not oppose). Similar to the facts of this case, plaintiff asserted a cause  
21 of action under the Unruh Act and sought injunctive relief and damages. *Id.* at \*1.  
22 Plaintiff’s cause of action under the Unruh Act was premised upon a violation of the  
23 ADA. *Id.* He did not allege a cause of action under the ADA or seek relief under  
24 the ADA in his prayer for relief. *Id.*

25 Contending that defendant’s removal was groundless, plaintiff sought his  
26 attorneys’ fees in support of his motion to remand. Plaintiff cited *Wander* and  
27 argued that “state law’s incorporation of the ADA does not create federal-question  
28 jurisdiction and asserted that “[t]he Ninth Circuit Court of Appeals cannot be any

1 clearer on this point: Federal-question jurisdiction over a state-law claim is not  
2 created just because a violation of federal law is an element of the state law claim.”  
3 *Id.* The *Fontano* court disagreed and declined to award plaintiff any fees or costs:

4 “However, this issue is not as clear as Plaintiff suggests. In *Wander*, a  
5 plaintiff brought a claim for injunctive relief under the Americans with  
6 Disabilities Act and a claim for damages under the California Disabled  
7 Persons Act in federal court. *Wander*, 304 F.3d at 857. When plaintiff’s  
8 claim for injunctive relief became moot, the court dismissed his state law  
9 claims for lack of subject matter jurisdiction, which plaintiff appealed. *Id.* at  
10 857-58. The *Wander* court affirmed the district court’s dismissal of plaintiff’s  
11 state law claims, holding that “there is no federal-question jurisdiction over a  
12 lawsuit for *damages* brought under California’s Disabled Person’s Act, even  
13 though the California statute makes a violation of the federal Americans with  
14 Disabilities Act a violation of state law...

15 *Thus, the Wander court left open the question of whether a claim*  
16 *seeking injunctive relief under a state law incorporating the ADA*  
17 *would give rise to federal-question jurisdiction...*

18 Without any evidence that Plaintiff’s claim for injunctive relief was  
19 moot at the time Defendant removed the case to federal court, it is at  
20 the very least arguable that this Court had federal-question jurisdiction  
21 over Plaintiff’s section 51(f) claim.” *Id.* at \*2 (emphasis added).

22 Another district court in California, *Pickern v. Best Western Timber Cove*  
23 *Lodge Marina Resort*, 194 F. Supp. 2d 1128 (E.D. Cal. 2002), relied upon by the  
24 *Fontano* court, concluded that a complaint seeking *injunctive relief* under a state law  
25 statute incorporating the ADA would, in fact, give rise to federal-question  
26 jurisdiction. The *Pickern* court reasoned:

27 “State law provides for injunctive relief as well as damages, *see* Cal.  
28 Civ. Code § 52.1(b), and it is possible for a state law claim for  
injunctive relief to be premised solely on a violation of the ADA. Such  
a claim would be no different from a federal ADA claim. *Federal*  
*question jurisdiction must exist in those circumstances.* Simply by  
incorporating the ADA into state law, state legislatures cannot divest  
the federal courts of original jurisdiction over state claims that are, for  
all intents and purposes, federal ADA claims. State claims for damages,  
on the other hand, are not identical to federal ADA claims for  
injunctive relief. *Thus, federal courts would have original jurisdiction*



1        *over state claims for injunctive relief, and supplemental jurisdiction*  
2        *over state claims for damages. Id. at 1132 n.5 (emphasis added).*

3        The opinion in *Pickern* was cited with approval by the Ninth Circuit in  
4        *Wander, supra* at 860. *See also Thurston v. The Container Store, Inc.*, Case No.  
5        5:16-CV-02658-SVW-DTB, \*3-4 (C.D. Cal. Feb. 16, 2017) (“[I]t is clear to this  
6        Court that *Wander* is not directly applicable to this case...the Defendant is correct  
7        that the Plaintiff’s cause of action may require resolving the Defendant’s liability  
8        under the ADA, which would seem to meet the test for ‘arising under’ federal law”).

9        In this case, federal question jurisdiction exists. Unlike *Wander*, Plaintiff  
10       seeks injunctive relief and concedes that his Unruh Act claim is based solely upon  
11       alleged violations of the ADA: “Plaintiff’s UCRA claim is based upon a violation  
12       of Civil Code §51(f), which incorporates the ADA’s standards by reference.”  
13       (Plaintiff’s motion to remand at 4; FAC ¶¶67, 68; Prayer ¶2).

14       In addition, the FAC alleges that Defendant’s Website violates the Unruh  
15       Act because the barriers Plaintiff experienced violate WCAG guidelines applicable  
16       to governmental websites under Title II of ADA. (FAC ¶¶ 35-37, 53). The Unruh  
17       Act and the CBC do not contain any website accessibility standards. In other words,  
18       Plaintiff attempts to rely upon federal law to try to prove his claims. Therefore,  
19       deciding the dispute presented by this case – whether WCAG accessibility standards  
20       apply under the ADA to non-governmental websites such as Defendant’s Website  
21       and if so, what those standards are and require – involves resolution of complex and  
22       substantial questions of federal law.

23       Further, the resolution of the injunctive relief portion of Plaintiff’s claim that  
24       is premised exclusively upon alleged ADA violations is of substantial importance to  
25       the federal system. Congress specifically designed the ADA around the idea that  
26       access for persons with disabilities would be enhanced through resolution of access  
27       claims by private litigants in the federal courts. Federal policy is to effectuate  
28       improved access for persons with disabilities by permitting private litigants to

1 resolve their claims in federal court where a plaintiff has alleged a violation of the  
2 ADA. In fact, Congress explicitly stated that one of the purposes in passing the  
3 ADA was “to ensure that the *Federal government plays a central role in enforcing*  
4 *the standards established in this act* on behalf of individuals with disabilities.” 42  
5 U.S.C. § 12101(b)(3) (emphasis added). It would run contrary to this expectation  
6 for the federal courts to cede enforcement of the ADA to the states.

7 For the above reasons, this Court may properly exercise federal question  
8 jurisdiction over the instant case.

9 **IV. CONCLUSION.**

10 For all of the foregoing reasons, the Court should exercise its discretion to  
11 retain jurisdiction of this matter in its entirety, and deny Plaintiff’s motion to  
12 remand.  
13

14 Dated: April 28, 2025

15 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
16

17 By /s/ Michael J. Chilleen  
18 MICHAEL J. CHILLEEN  
19 Attorneys for Defendant  
20 ACE HARDWARE CORPORATION  
21  
22  
23  
24  
25  
26  
27  
28